IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 543 of 1989

with

CRIMINAL MISC.APPLICATION No 1945 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

THAKORE RUPSINGJI MANSINGJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 543 of 1989
MR HARIN P RAVAL for Petitioners
MR YF MEHTA, APP, for Respondent No. 1

2. Criminal Misc.ApplicationNo 1945 of 1989
MR PM RAVAL for Petitioners
MR YF MEHTA, APP, for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 16/01/97

ORAL JUDGEMENT: (Per Pandya, J.)

1. In all 18 accused were facing trial before the learned Sessions Judge, Mehsana, for offence under Sections 147, 148, 149, 302, 337, 323 and 504, all of Indian Penal Code. At the end of the trial, of the original 18 accused, Nos. 1 to 5 and 14 came to be convicted for offence under Section 302 and 323, I.P.C. Each one of them was, therefore, awarded life sentence. They were also held guilty of offence under Section 323, I.P.C., but no separate sentence was awarded.

2. It was submitted by the learned Advocate Shri Anandjiwala, at the outset, that, if one reads the charge Ex.5, it is clear that none of the accused has been charged with an offence punishable under Section 302 independently. The charge, as framed by the learned Sessions Judge, is only under Section 302 read with Section 149. At the end of the trial, the learned Judge has acquitted all the accused for offence under Section 147, 148, 149, 337 and 339 also. This would mean that the learned Trial Judge has not believed the charge of unlawful assembly. Yet when the accused are held guilty for offence punishable under Section 302, without going into the technicality of defect in the charge, the prosecution will have to prove that each one of the accused now held guilty by the learned Trial Judge had inflicted a blow which on its own had resulted into fatality.

3. This would make the medical evidence or greater importance. This is in the form of postmortem report at page 322, Ex.60, proved by the doctor Bhanukumar Shivlal, P.W.16, Ex.59, page 318. There were two injuries which could have resulted into death and they are injuries No.1 and 2. The first injury is the size of 12 cm. x 2 cm., bone deep causing laceration of brain. The second is also of the size 5 cm x 1 cm, again bone deep with same injury in the brain. The first one is on the parital region reaching upto frontal region and the second one is on the occipito-parital region.

4. It is the consistent story of the prosecution witness right from the injured complainant-Keshuji Devuji that accused No.1 was having a Dharia. Doctor Bhanukumar, Ex.59, has categorically stated that injury No.1 could have been caused by Dharia and that is his opinion about injury No.2 also. Injuries No.1 and 2 were sufficient to cause instant death, according to the

doctor, while other injuries are not capable of causing death, obviously in ordinary course of nature.

5. Involvement of accused No.1 is only as to giving the first blow on the head. About his having given the second blow, there is no clear cut evidence. One blow given by him is sufficient in ordinary course of nature to cause death. His case, under Section 302, in our opinion, has rightly been dealt with and has been held responsible for the same.

6. As against that, for the remaining accused, there is no material whatsoever on record suggesting that if at all they had given any blow they were responsible for the fatal consequence. Obviously, therefore, they could not have been convicted unless the charge of unlawful assembly was proved.

7. There was some suggestion from the prosecution side about involvement of accused-appellant no.2. However, originally, as per the complainant, this accused was armed with stick and that is the story the complainant stated before the Court also during the course of his deposition. Other witness tried to make out a case that accused No.2 was having a Berchi. That Berchi is not capable of causing either of the two injuries, in the opinion of the doctor. The net result of the same is that the charge against him is also not proved.

8. In the result, the appeal succeeds so far as accused-appellants No.2, 3, 4, 5 and 6. They are ordered to be set at liberty forthwith, if not required for any other purpose. Appeal is dismissed so far as accused-appellant No.1 is concerned and the order of the Trial Court is confirmed so far as accused No.1 is concerned.

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